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September 1, 2006

**VIA COURIER**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc., Inc.  
236 Massachusetts Avenue, N.E.,  
Suite 110  
Washington, DC 20002

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Federal Communications Commission  
Office of Secretary

Re: IDT Telecom, Inc.  
Petition for Clarification or, in the Alternative, for Reconsideration  
WC Docket No. 05-68

Dear Secretary Dortch:

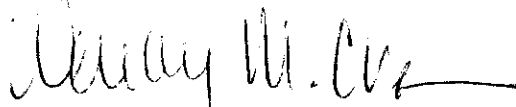
Enclosed for filing is the Petition for Clarification or, in the Alternative, for Reconsideration of IDT Telecom, Inc. of one particular statement in the *Declaratory Ruling and Report and Order* issued by the Federal Communications Commission ("Commission") in the above-captioned proceeding ("Petition").<sup>1</sup>

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, the original and eleven (11) copies of this Petition are being filed herewith. Please do not hesitate to contact us at 202-408-6345 should have any questions regarding this Petition.

Sincerely,

SONNENSCHN NATH & ROSENTHAL LLP

By:



Kathleen Greenan Ramsey  
Wendy M. Creeden

<sup>1</sup> *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79 (rel. June 30, 2006).

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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SEP - 1 2006

Federal Communications Commission  
Office of Secretary

In the Matter of

Regulation of Prepaid Calling Card Services

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WC Docket No. 05-68

**PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE,  
FOR RECONSIDERATION OF IDT TELECOM, INC.**

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Dated: September 1, 2006

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## SUMMARY

In its recent *Declaratory Ruling and Report and Order*, the Commission states that it “agrees . . . that [its] rules require the payment of dial-around compensation to a payphone service provider when the cardholder completes a call to the platform without attempting to call a third party.” While it appears that the Commission intended to confirm that prepaid calling card providers must remit dial-around payphone compensation to payphone service providers for information service calls (*e.g.*, access to sports, horoscope, news, etc.) completed from payphones, IDT Telecom, Inc. is concerned that the language in the footnote may be construed more broadly to assert that dial-around payphone compensation is owed on *any communication in which the calling party reaches the platform and hangs up, failing to input all or part of a called party number*. In other words, the qualifier “without attempting to reach a third party” in footnote 101 is inappropriate as it arguably requires compensation for incomplete calls where the cardholder reaches the platform and hangs up. Therefore, IDT Telecom, Inc. requests clarification from the Commission that the statement in the *Order* merely confirms that payment of dial-around compensation to PSPs is required for calls in which the cardholder accesses an information service from the provider’s platform. To the extent that the Commission intended to require compensation for communications that merely reach the platform, IDT seeks reconsideration of such requirement. Such a rule would be contrary to the public interest and in violation of both the Communications Act of 1934, as amended, and the Administrative Procedure Act.

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Regulation of Prepaid Calling Card Services	)	WC Docket No. 05-68
	)	
	)	

**PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE,  
FOR RECONSIDERATION OF IDT TELECOM, INC.**

IDT Telecom, Inc. (“IDT” or “Company”), through its undersigned counsel, respectfully submits this Petition for Clarification or, in the Alternative, for Reconsideration of one particular statement in the *Declaratory Ruling and Report and Order* (“*Order*”) issued by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.<sup>1</sup> Specifically, in footnote 101 of the *Order*, the Commission states that it “agrees . . . that [its] rules require the payment of dial-around compensation to a payphone service provider when the cardholder completes a call to the platform without attempting to call a third party.”<sup>2</sup> While it appears that the Commission intended to confirm that prepaid calling card providers must remit dial-around payphone compensation to payphone service providers (“PSPs”) for information service calls (*e.g.*, access to sports, horoscope, news, etc.) completed from payphones, IDT is concerned that the language in the footnote may be construed more broadly to assert that dial-around payphone compensation is owed on *any communication in which the calling party reaches the platform and hangs up, failing to input all or part of a called party number*

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<sup>1</sup> *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79 (rel. June 30, 2006).

<sup>2</sup> *Id.* at n.101.

(“CPN”).<sup>3</sup> In other words, the qualifier “without attempting to reach a third party” in footnote 101 is inappropriate as it arguably requires compensation for incomplete calls where the cardholder reaches the platform and hangs up, never reaching a third party and never accessing an information service.

Not only does IDT believe the Commission did not intend to mandate compensation for such incomplete calls, the Company also submits that such a result would be a violation of Section 276 of Communications Act of 1934, as amended, (“Act”) that requires payphone compensation for completed calls only, and would be contrary to the public interest. Accordingly, IDT requests clarification from the Commission that the sole intent of footnote 101 of the *Order* was to confirm that payment of dial-around compensation to PSPs is required for information service calls in which the cardholder, instead of inputting all or part of a CPN, accesses an information service from the platform, and in no way should be construed to require dial-around compensation for communications that only reach the platform. To the extent that the Commission intended to require compensation for communications that merely reach the platform, IDT seeks reconsideration of such requirement in the *Order*. Such a rule would be contrary to the public interest and in violation of both the Act and the Administrative Procedure Act (“APA”).

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<sup>3</sup> IDT interprets the phrase “without attempting to call a third party” in footnote 101 to mean that the cardholder does not input all or part of a CPN after reaching the platform. This is the only practical manner in which a prepaid calling card provider may determine whether a cardholder attempts to reach a third party. To the extent a cardholder inputs a CPN and the call does not reach the called party, the call is incomplete and not subject to payphone compensation.

## I. BACKGROUND

The focus and the purpose of the *Prepaid Calling Card Proceeding* was to examine the regulatory classification and framework for enhanced prepaid calling card services, including the payment of access charges and Universal Service Fund (“USF”) contributions -- not to address or change the Commission’s payphone compensation rules or the definition of a “completed call” requiring payphone compensation under Section 276 of the Act. Indeed, there is no mention of payphone compensation in the Commission’s *Notice of Proposed Rulemaking* (“NPRM”) that initiated the proceeding,<sup>4</sup> nor in AT&T’s Emergency Petition that was addressed in the Commission’s *Order*.<sup>5</sup> Prior to the issuance of the *Order*, only one commenter (the American Public Communications Council (“APCC”)) of 23 participants in the proceeding referred to payphone compensation as part of a written or oral submission to the Commission.<sup>6</sup>

Likewise, the *Order* itself mentions payphone compensation only two times, and both are in the context of a footnote in which the Commission agreed with APCC as to certain aspects of the Commission’s existing payphone compensation requirements.<sup>7</sup> In the first footnote, the Commission agrees that under the current payphone compensation requirements, prepaid calling card providers are required to pay dial-around compensation to payphone owners when the cards are used in the provision of *telecommunications services*.<sup>8</sup> In the second footnote, footnote 101,

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<sup>4</sup> See *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket Nos. 03-133 and 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 4826 (2005) (“*Order and NPRM*”).

<sup>5</sup> See AT&T Emergency Petition, WC Docket No. 05-68 (filed May 3, 2005).

<sup>6</sup> See American Public Communications Council Comments, WC Docket No. 05-68 (filed April 15, 2005) (“APCC Comments”).

<sup>7</sup> *Order* at nn.73 & 101.

<sup>8</sup> *Id.* at n.73 (emphasis added).

which is associated with the Commission's decision to consider the platform the CPN in certain circumstances for assessing access charges, the Commission states that it "agrees with APCC that [its] rules require the payment of dial-around compensation to a payphone service provider when the cardholder completes a call to the platform without attempting to call a third party."<sup>9</sup>

As cited by the Commission, the statement in footnote 101 of the *Order* was made in direct response to APCC's request that the Commission explicitly confirm that under the existing payphone compensation requirements, dial-around compensation is owed on prepaid calling card calls in which the cardholder receives an information service, such as accessing weather, horoscope, or news information:

If the Commission does classify certain calls accessing "enhanced" prepaid card offerings as information service, the Commission can and should rule that calls access such offerings are subject to payphone compensation. Section 276 requires the Commission to ensure fair compensation for "each and every completed . . . call," without any distinction based on the regulatory classification of the call.<sup>10</sup>

Regardless of their classification, calls made to "enhanced" offerings are clearly "completed" calls for purposes of the payphone compensation requirement. The fact that the call may be free to the caller does not change the fact. Just as calls made to an airline information data base (e.g., to determine the status of a flight) are "completed" calls because they are answered by the intended called party, calls to a service provider's data base (e.g., to obtain information about minutes remaining on a card) are also "completed calls" because *they* are answered by the intended called party.<sup>11</sup>

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<sup>9</sup> *Id.* at n.101.

<sup>10</sup> APCC Comments at 13.

<sup>11</sup> APCC Comments at n.12.



Thus, it appears that in footnote 101 the Commission confirmed for APCC that the communication to the platform constitutes a completed call subject to payphone compensation when, and only when, the calling party obtains an information service via the platform.<sup>12</sup>

## **II. CLARIFICATION OF FOOTNOTE 101 IS NECESSARY**

### **A. Footnote 101 Could Be Misconstrued by PSPs**

While the intent of footnote 101 may have been to confirm that information service calls are compensable as “completed” calls under Section 276 of the Act and the Commission’s existing payphone compensation requirements, the exact language of the footnote, unfortunately, could be construed more broadly. Specifically, by not expressly mentioning information service calls in the footnote, the statement that dial-around compensation is due “when the cardholder completes a call to the platform without attempting to call a third party” could be interpreted to mean that dial-around compensation is required for *any communication in which the calling party reaches the platform and hangs up, failing to input all or part of a CPN*.<sup>13</sup> The argument would be that without any specific limitation of the language in footnote 101 to information service calls, the footnote adopts a new requirement that any telephone communication that reaches the platform without the insertion of all or part of a CPN is considered a compensable

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<sup>12</sup> In its comments, APCC characterized compensable information services to include “calls to a service provider’s data base” to obtain information about minutes remaining on a card. *Id.* It is important to clarify that as a general matter, the minutes remaining on a card typically are provided to the cardholder automatically after a cardholder inputs a CPN. The provision of such information in that situation is merely incidental to the processing of a telephone call to a third party and not a separate, completed information service call for which compensation is required under Section 276 of the Act or the Commission’s rules. *See The Time Machine, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 1186, ¶ 40 (Com. Car. Bureau 1995). Accordingly, unless the calling card information is offered as an express option to the cardholder, the provision of such information to the cardholder is not compensable.

<sup>13</sup> *See Order* at n.101 (emphasis added).

call because the “cardholder complete[d] a call to the platform without attempting to call a third party.”<sup>14</sup> While such an argument may be an obvious misinterpretation of the footnote and the resulting requirement a clear violation of the Act, IDT nevertheless is concerned about the practical effects of such a misinterpretation.

In particular, the practical problem to this broad interpretation of the footnote is that in IDT’s experience, there are many instances in which a cardholder may reach the platform, but not input the personal identification number (“PIN”) and/or the CPN and, instead, hang up.<sup>15</sup> While these situations do not constitute the majority of all prepaid calling card calls, these situations are not uncommon. Calling parties hang-up after reaching the prepaid calling card provider’s platform for various reasons, such as, confusion, distraction, indecision, etc.

While the omission of the words “information service” in footnote 101 may seem minor, given the frequency with which callers reach the platform without inputting all or part of a CPN, IDT believes there is a real and valid concern for a potential misinterpretation of footnote 101 that compensation is owed for such calls.

**B. Footnote 101 Does Not Change the Commission’s Long Standing Rule that Communications to the Platform Alone are Not Compensable**

Pursuant to Section 276 of the Act, payphone compensation is required for “completed” calls only.<sup>16</sup> The Commission concluded several years ago that a “completed” call is a call that

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<sup>14</sup> *Id.*

<sup>15</sup> For example, a PSP could claim that compensation is owed when (1) the cardholder reaches the platform, fails to input a PIN, fails to input all or part of a CPN and then hangs up, or (2) the cardholder reaches the platform, inputs a PIN, fails to input all or part of a CPN, and then hangs up.

<sup>16</sup> 47 U.S.C. § 276(b)(1)(A) (“[T]he Commission shall take all actions necessary . . . to prescribe regulations that establish a per call compensation plan to ensure that all payphone

is “answered by the called party.”<sup>17</sup> For example, calls in which the calling party hangs up before reaching the third party, as identified by all or part of the CPN, are not completed calls requiring compensation. Similarly, blocked calls are not answered by the called party and thus are non-compensable.<sup>18</sup> The Commission also concluded that for purposes of determining payphone compensation a prepaid calling card platform is not a “called party” and, therefore, communications that reach a platform are not completed calls under section 276 of the Act and, therefore, do not require compensation to the PSP.<sup>19</sup>

As cited by the Commission, the statement in footnote 101 of the *Order* was made in direct response to APCC’s request that the Commission explicitly confirm that under the existing payphone compensation requirements, dial-around compensation is owed on prepaid calling card calls in which the cardholder receives an information service, such as accessing weather,

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service providers are fairly compensated for each and every *completed . . . call* using their payphone.” (emphasis added).

<sup>17</sup> *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, 11 FCC Rcd 20541, 20574 (1996) (“*First Payphone Order*”) (“We conclude that a ‘completed call’ is a call that is answered by the called party.”); *see also The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, CC Docket No. 96-128, 13 FCC Rcd 10893, 10915 (1998) (“*Coding Digit Waiver Order*”) (“The Commission defined a completed call as a call answered by the called party.”); *see also The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Order on Clarification, CC Docket 96-128, 16 FCC Rcd 20922, 20925 (2001) (“*Third Order on Reconsideration*”) (“[W]e clarify that only calls that are completed (i.e., answered by the called party) are compensable.”).

<sup>18</sup> *Coding Digit Waiver Order*, 13 FCC Rcd at 10915 (“Because a blocked call is by definition not a completed call, the Payphone Orders do not require . . . compensation.”).

<sup>19</sup> *Third Order on Reconsideration*, 16 FCC Rcd 20922 (2001) (The Commission rejected the requests of WoldCom and AT&T to change the definition of completed calls to authorize the practice of paying compensation to PSPs for all calls that complete to a switch-based reseller’s platform).

horoscope, or news information.<sup>20</sup> Thus, it appears that in footnote 101 the Commission confirmed for APCC that for information service calls, the call to the platform constitutes a completed, compensable call when, and only when, the calling party obtains an information service via the platform.

Given the substance of APCC's comments and the fact that the Commission was responding to these comments in a footnote in the context of a discussion of reporting requirements for access charges, it is a reasonable and, IDT believes, a correct reading of footnote 101 that the Commission confirmed that payphone compensation is required for information service calls. No new definition of "completed" call was created. No new rule occurred. Instead, the Commission merely intended to confirm that a calling card call in which the cardholder receives an information service is compensable as a "completed" call under Section 276 of the Act and the Commission's existing payphone compensation rules when a calling party accesses an information service through the calling card provider's platform.

**C. Misconstrued Footnote 101 Would Lead to Increased Fraud and Excessive Burdens on Prepaid Calling Card Providers and Consumers**

IDT believes a misinterpretation of footnote 101 would increase fraud and place immense burdens on prepaid calling card providers and cardholder -- so much so, that if the Commission were to enforce the overly broad reading of the footnote, prepaid calling card providers would be compelled to block calls from payphones, thereby leading to reduced compensation for PSPs. This loss of revenue on a per-payphone basis would most assuredly lead to a further loss of payphones, thereby harming consumers that rely on payphones. For example, the misconstrued rule would encourage corruption and subject prepaid calling card providers to fraud. In order to

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<sup>20</sup> *Order at n.101 (citing to APCC Comments at 13, n.12).*

increase the number of calls that hit the platform and, therefore, the payphone compensation owed to the PSP, a non-cardholder, need only obtain the toll-free access number of a prepaid calling card provider by looking at (not buying) a prepaid calling card and then repeatedly dial the number from a payphone, hanging up once the call reaches the platform. Without the PIN, the prepaid calling card provider will have no opportunity to recover the cost of compensating the PSP. Therefore, the prepaid calling card providers will be forced to pay PSPs when neither the prepaid calling card provider nor the calling party received any benefit, and ultimately will need to block calls originating from payphones due to the financial strain. Placing such a burden on prepaid calling card providers is unjust and unreasonable and not intended by Section 276 where Congress explicitly deemed only completed calls compensable.

Notably, the Commission has previously acknowledged the potential problem for fraud when it decided that operator service providers (“OSPs”) were not required to pay payphone compensation on calls for which the carrier generated no revenue. In its *First Report and Order on Operator Service Provider Compensation*, the Commission determined that it would not be equitable to require OSPs to compensate payphone owners for calls that generated no revenue for the OSPs.<sup>21</sup> The Commission explicitly recognized that purposeful uncompleted calls could be used improperly as a way to increase compensation.<sup>22</sup> The same reasoning is true here and applies equally to prepaid calling card providers as OSPs.

In addition to calls where the calling party provides no PIN, compensation for calls in which the cardholder reaches the platform, inputs the PIN, but hangs up before inputting all or

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<sup>21</sup> *First Report and Order on Operator Service Provider Compensation*, 6 FCC Rcd 4736, 4746 (1991), *rev'd on other grounds, Florida Pub. Telecomm Ass'n, Inc. v. FCC*, 54 F.3d 857 (D.C. Cir. 1995).

<sup>22</sup> *Id.*

part of a CPN will also place a strain on prepaid calling card providers by devaluing the prepaid calling card and imposing a hardship on consumers.<sup>23</sup> Although a calling card provider can arguably charge the cardholder that inputs a PIN after connecting to the platform in order to compensate the PSP, such charges, to the extent there is enough money remaining on the prepaid calling card, would unfairly punish customers and decrease the value of the prepaid card for the consumer. In situations where there are sufficient funds on the card, a deduction from the card of a minimum of \$0.494 would devalue the card and punish the consumer for hanging up prematurely. The consumer would likely be surprised to learn that such communication with the platform is a “completed” call. For the cards without sufficient funds to cover the payphone compensation payment, the prepaid calling card provider will be forced to finance the compensation and face financial strain, as explained above.

These consequences are particularly unjust given that the market users of prepaid cards typically are immigrant and ethnic populations as well as the credit-challenged or budget-conscious consumers (*e.g.*, low income, elderly). Consumer confusion on charges for such calls likely will be pervasive and could negatively impact the market for prepaid calling card services as consumers choose not to use those services. Ultimately less competitive options would be available as carriers leave the market or block calls. Such a result would be contrary to the public interest and the Congressional mandate to encourage payphones.

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<sup>23</sup> For example, a calling party may initiate a communication that reaches the platform, input the PIN and then for various reasons (*e.g.*, confusion, interruption, delay, etc.) hang up.

**III. TO THE EXTENT THAT FOOTNOTE 101 APPLIES TO COMMUNICATIONS THAT MERELY REACH THE PLATFORM, AN IMPERMISSIBLE RULE CHANGE HAS OCCURRED IN VIOLATION OF THE ACT AND THE ADMINISTRATIVE PROCEDURES ACT, AND IS ADVERSE TO THE PUBLIC INTEREST**

As described above, IDT strongly believes that the Commission did not intend to change the existing payphone compensation rules and require dial-around compensation for communications that merely reach the platform and hang up. However, to the extent that the Commission does not agree with IDT's interpretation of footnote 101, IDT respectfully requests reconsideration of the Commission's decision in footnote 101 of the *Order*.

**A. A Rule Change Violates Section 276 of the Act**

First and foremost, for the reasons explained in the previous section, any rule that mandates dial-around compensation for communications that reach only the platform violates the basic mandate of Section 276 of the Act that payphone compensation is required for "completed" calls only.<sup>24</sup> The Commission has repeatedly found that a communication to a platform is not a "completed" call.<sup>25</sup> Rather, a calling party must reach a called party, whether the called party is a third party or an information service. Therefore, a rule that would require compensation for communications that reach the platform alone plainly violates the Act's requirement that compensation is due on "completed" calls only and should be rescinded immediately.

**B. A Rule Change Violates the APA Notice Requirements**

If footnote 101 is intended to mandate that compensation is required for communications that reach the platform but the calling party hangs up before the call is connected to an information service or a third party, such mandate is a clear rule change for which proper notice

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<sup>24</sup> 47 U.S.C. § 276(b)(1)(A); *see also supra* at n.14.

<sup>25</sup> *See supra* nn.14-17.

under Section 553(b) of Administrative Procedures Act (“APA”) was not given.<sup>26</sup> Specifically, and again for the reasons discussed in the previous section, the Act and the Commission’s payphone compensation rules require that compensation be paid on “completed” calls only, which the Commission has long defined as a call “answered by the called party.” The Commission has previously found that a prepaid calling card provider’s platform is not a called party and communications to the platform do not constitute compensable completed calls. Accordingly, to the extent that the Commission intends to require compensation on such calls, it is redefining what constitutes a “completed” call under the Act and the Commission’s existing payphone compensation requirements and as a rule change, proper notice of the rule change is required under the APA.<sup>27</sup>

The definition of a “completed” call has been well vetted in a number of other proceedings before the Commission and was not at issue in this particular proceeding.<sup>28</sup> As noted above, the purpose of this proceeding was to address the regulatory classification and framework for prepaid calling card providers, *not* to reexamine the definition of a “completed” call under the Act and the payphone compensation rules. Indeed, neither the *NPRM* nor AT&T’s Emergency Petition mention payphone compensation or even give a hint that the Commission intended to address the definition of what constitutes a completed call under the Act and the Commission’s payphone compensation requirements. And not surprisingly, as a result, the record in this proceeding is woefully deficient on payphone compensation issues, with only one

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<sup>26</sup> 5 U.S.C. §553(b).

<sup>27</sup> See *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

<sup>28</sup> See *supra* at nn.14-17.



of 23 participants even mentioning payphone compensation requirements in written or oral submissions to the Commission.

The legal test for adequacy of an agency's notice under the APA is whether the notice allowed for the proposed rule to be exposed to public comment, whether the notice provided fair treatment for affected parties, and whether the notice gave interested parties an opportunity to develop evidence for their positions on the rule.<sup>29</sup> Any new rule in the *Order* that mandates payphone compensation on communications that reach the platform without the inputting of all or part of a CPN clearly does not meet this test.

First, there was obviously no exposure of this proposed rule to public comment -- neither payphone compensation, nor the definition of a completed call, were mentioned in the *NPRM*, and thus there was no suggestion at all that the Commission would be examining these issues, particularly when the definition of a "completed" call has been vetted in a previous decision.<sup>30</sup> Second, because no notice was provided, the affected parties did not even consider the possibility of a policy change, as evidenced by the striking lack of comment on issue.<sup>31</sup> Third, there was no opportunity for interested parties to develop evidence for positions on the proposed rule change.

With no notice of any proposed payphone compensation rule change, any new rule in the *Order* that mandates payphone compensation on communications that reach the platform alone, is clearly not a "logical outgrowth" of the *NPRM*.<sup>32</sup> The brief mention of payphone

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<sup>29</sup> *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983).

<sup>30</sup> *Contra Pub. Serv. Comm'n of the Dist. of Columbia v. FCC*, 906 F.2d 713 (D.C. Cir. 1990) (permissive suggestion of proposal is adequate notice under the APA).

<sup>31</sup> *See Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

<sup>32</sup> *Id.* at 376 ("[T]here can be no 'logical outgrowth' of a proposal that the agency has not properly noticed.").

compensation in one participant's comments does not transform any payphone rule change into a "logical outgrowth" of the *NPRM*, nor does it constitute notice under the APA or cure the Commission's inadequate notice.<sup>33</sup> Instead, a new round of notice and comment on any such proposed rule change should have been implemented, which would have provided the first opportunity for interested parties to offer comments that could have persuaded the Commission not to change its policy.<sup>34</sup>

Moreover, to the extent that footnote 101 is intended to require dial-around compensation for all communications that reach the platform, it is evident that no notice, much less "adequate" notice, was provided to interested parties that such a rule change was being contemplated by the Commission as part of this proceeding. Accordingly, any adoption of such rule as part of footnote 101 of the *Order* is a clear violation of the notice requirements under Section 553(b) of the APA and thus should be rescinded by the Commission.

**C. A Rule Change is Not in Public Interest**

IDT further submits that to the extent that footnote 101 is intended to begin requiring dial-around compensation for all communications that reach the platform, the rule change is not in the public interest because it will encourage compensation fraud and impose an undue hardship on prepaid calling card consumers and providers (*see* discussion at II.C., *supra*).

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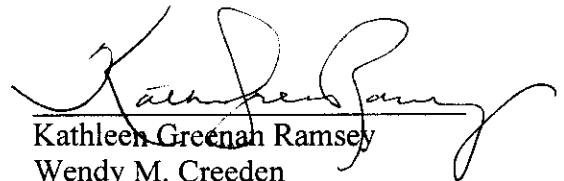
<sup>33</sup> *MCI Telecommunications Corp. v. FCC*, 57 F.3d 1136, 1142 (D.C. Cir. 1995) (interested parties to this proceeding were not required to monitor comments filed by all others).

<sup>34</sup> *See Am. Water Works Ass'n v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994).

**IV. CONCLUSION**

While the omission of the words "information service" in footnote 101 may seem minor, given the frequency by which callers reach the prepaid calling card provider's platform and hang up without inputting all or a part of a CPN, IDT believes that there is real and valid concern for misinterpretation of footnote 101 that compensation is owed for such incomplete calls. Accordingly, IDT respectfully asks that the Commission to issue a clarification of the *Order* for the purpose of explaining that footnote 101 merely confirms that under the existing payphone compensation rules, payphone compensation is owed for information services obtained via a prepaid calling card provider's platform.

Respectfully submitted,



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Dated: September 1, 2006